

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : 08-11153
LEXINGTON PRECISION CORP. : April 22, 2008
Debtor. :
-----X New York, New York

TRANSCRIPT OF INITIAL CASE CONFERENCE AND MOTIONS
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: CHRISTOPHER MARCUS, ESQ.
JOHN LUCAS, ESQ.
Weil, Gotshal and Manges
767 5th Avenue
New York, New York 10153

For the Committee: PAUL SILVERSTEIN, ESQ.
Andrews Kurth
450 Lexington Avenue
New York, New York 10017

For the U.S. Trustee: MARYLOU MARTIN, ESQ.

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1 THE COURT: Please be seated. We're here in
2 Lexington Precision Corp. number 08-11153. Good morning.

3 MR. MARCUS: Good morning.

4 THE COURT: Has everybody made their appearances?
5 Okay. I have the list.

6 MR. MARCUS: Good morning, Your Honor. Christopher
7 Marcus from Weil, Gotshal and Manges on behalf of --

8 THE COURT: Good morning, Mr. Marcus.

9 MR. MARCUS: Good morning. I'm here with my
10 colleague, John Lucas, at counsel table. Let me introduce
11 Warren Delano. He's the president of the Lexington debtors, is
12 here as well.

13 Your Honor, we're here for a number of matters. Some
14 of these motions were presented to Your Honor in connection
15 with some first day relief. Some of them were noticed out for
16 the 20 days.

17 THE COURT: Right.

18 MR. MARCUS: We're before Your Honor for the very
19 first time today.

20 THE COURT: Before we begin with that, as I
21 understand it, Mr. Silverstein, are you representing the
22 committee?

23 MR. SILVERSTEIN: Yes, Your Honor.

24 THE COURT: Okay. I made the disclosure at the start
25 of the last hearing and Mr. Silverstein was here and I thought

1 I would just repeat it, and that is that the DIP lenders I
2 guess are represented by O'Melveny and Myers where I practiced
3 before coming on the bench. That was the reason that -- and I
4 cannot hear any matters in which O'Melveny is counsel. That
5 was the reason that Judge Gonzalez handled the DIP motion. I
6 gather you've had your final DIP hearing and that was
7 completed. I concluded at this stage that I am proceeding with
8 the handling of the main case. If other conflict issues arise,
9 I will deal with it at the time. Okay.

10 MR. MARCUS: Thank you.

11 THE COURT: Go ahead.

12 MR. MARCUS: I thought actually I might start with
13 just a little bit of background and let you know what's
14 happened since the first day hearing.

15 I'm going to tell you that Judge Gonzalez had set
16 down the final DIP hearing for April 17th and we proceeded in
17 front of Judge Gonzalez on that day on an uncontested basis,
18 and he did enter the order authorizing debtor in possession
19 financing up to \$4 million as well as the use of cash
20 collateral. So that was obviously very important to the
21 company.

22 The United States trustee has appointed a seven
23 member creditors committee. As was just noted, Mr. Silverstein
24 and his firm were selected by the creditors committee as
25 counsel.

1 What else has happened since then? I think not much.
2 I think as Ms. Goldstein suggested at the very first day
3 hearing, this case is probably going to be more about fixing
4 the balance sheet than the operation. So I expect that the
5 significant work that's done throughout this case will be work
6 on the balance sheet, work with the committee and the banks on
7 restructuring the capital structure rather than fixing the
8 operations which the company believes is very strong, Your
9 Honor.

10 Unfortunately, we're not -- the down turn in the
11 automotive market and that's hit us a little bit and perhaps
12 affected the sort of over-leverage position. But as far as the
13 business operations go, the company is continuing to operate,
14 believes the business is very strong, has had some very
15 positive responses from its vendors as well as its customers in
16 connection with the message that we've put out about the
17 continued operation and the need for Chapter 11. So hopefully
18 that's all we'll need to achieve in the Chapter 11, Your Honor.

19 Your Honor, I would propose to proffer some
20 testimony -- incidentally, I don't believe there are any
21 objections to any of the motions that are on for today. So
22 what I'd like to do with Your Honor's permission is to just
23 proffer some testimony of Mr. Delano in support of the motions
24 that require some factual support and perhaps run through the
25 motions for Your Honor.

1 THE COURT: Okay, Mr. Marcus. Go ahead.

2 MR. MARCUS: Your Honor, I offer through a proof of--
3 through a proffer of testimony rather, Mr. Delano's testimony.
4 He's the president of Lexington Precision Corporation and
5 Lexington Rubber Group which I will refer to collectively as
6 Lexington, all the debtors in this proffer.

7 Mr. Delano is present in Court today and pursuant to
8 Federal Rule of Evidence 103, the Court may accept a proffer of
9 his testimony in lieu of direct examination.

10 Mr. Delano is certainly familiar with all material
11 aspects of Lexington's day-to-day operations, business, and
12 financial affairs. I will be offering Mr. Delano's testimony
13 in support of the following motions: The motion to pay pre-
14 petition wages and honor employee benefits; the motion to honor
15 customer programs or a customer program; the motion to pay pre-
16 petition common carrier charges, warehouse needs, and third
17 party processor fees; the debtor's motion to honor its
18 insurance programs; and the motion to pay pre-petition use
19 taxes.

20 I would note for Your Honor that at the first day
21 hearing some testimony was proffered from Dennis Welhouse who's
22 the chief financial officer of the debtor's. I will try not to
23 be too repetitive given the uncontested nature, but Mr. Delano
24 did support with testimony the wage motion and I believe common
25 carriers and some for customer programs although I have read

1 the transcript and I understood that Your Honor wanted then to
2 offer 20 days. So I'm not sure if any of that testimony would
3 come to play at all, but just for Your Honor's reference.

4 If called to testify, Mr. Delano would testify as
5 follows. As to his background, Mr. Delano would testify that
6 he received a Bachelor of Arts Degree from Harvard University
7 in 1974. Thereafter, Mr. Delano worked as a commercial loan
8 officer specializing in problem loans. In the early '80s he
9 worked for Nortel Simon, Inc. in the area of strategic
10 planning.

11 Since 1985, Mr. Delano, along with Mr. Michael Lubin
12 who is the chairman of the board of the debtor's, worked as a
13 work out consultant working with troubled companies. For the
14 last five years, however, they focused exclusively on
15 Lexington.

16 Mr. Delano would testify that he first became
17 involved with Lexington in 1985 when he made his first
18 investment in Lexington through a limited partnership.

19 Mr. Delano became a director in 1985 and has retained
20 a seat on Lexington's board ever since.

21 Mr. Delano will testify that in 1987 he and Mr. Lubin
22 took over management of Lexington's businesses and that for the
23 past 21 years he has been integrally involved in the management
24 of Lexington's business.

25 Mr. Delano will testify that he is the president of

1 Lexington since 1988.

2 In support of Lexington's motion for authority to pay
3 employee wages, compensation, and benefits Mr. Delano will
4 testify that he has read the motion and is familiar with its
5 contents.

6 Mr. Delano would testify that payment and
7 continuation of employee pre-petition wages, health and welfare
8 benefits is critical to Lexington's reorganization.

9 He would testify that in the ordinary course of
10 Lexington business it incurs payroll obligations to employees,
11 the operating division facilities in Rochester, New York;
12 Jasper, Georgia; Rockville, South Carolina; Vienna, Ohio; and
13 North Canton, Ohio.

14 Mr. Delano will testify that as of February 29, 2008
15 Lexington employed approximately 651 individuals of which 134
16 are salaried employees, 517 are hourly employees, and 22
17 individuals on a temporary basis through a temporary agency.

18 Mr. Delano will testify that Lexington's average
19 monthly gross payroll for all their employees is approximately
20 \$2 million and as of the commencement date there were
21 approximately \$365,000.00 of accrued unpaid pre-petition wage
22 and salary obligations.

23 He would testify that Lexington has established
24 various employee benefit plans and policies for its employees.
25 Such benefit plans and policies can be divided into the

1 following categories. Medical and health insurance, life
2 insurance, dental and disability benefits, vacation, personal
3 days, sick time, holiday pay, flex spending, 401K plan, and
4 expense reimbursement.

5 Mr. Delano would testify that the amount of the wage,
6 salary, and benefit obligations to any individual employee do
7 not exceed the cap of \$10,950.00 as prescribed in Section
8 507(a)(4) of the Bankruptcy Code.

9 Mr. Delano would testify that Lexington's business
10 relies heavily on an ability to produce superior products, by
11 employing skilled individuals whose efficiency maintains
12 production level acceptable cost.

13 Mr. Delano will testify that any delay or failure to
14 pay employee wages and employee benefits would be devastating
15 to the morale, dedication, confidence and cooperation of these
16 employees. Unplanned or premature employee attrition during
17 this critical stage of Lexington's restructuring would be
18 devastating to Lexington's future prospects. Without
19 authorization to pay wages and benefits, Lexington would suffer
20 immediate irreparable harm.

21 Mr. Delano would testify that absent an order
22 granting the relief requested by Lexington the employees will
23 suffer undo hardship and in many instances serious financial
24 difficulties as the amounts in question are needed to enable
25 certain employees to meet their own personal financial

1 obligations.

2 Without the requested relief, the stability of
3 Lexington will be undermined by the possibility of the
4 otherwise loyal employees will seek other employment
5 alternatives.

6 In support of the debtor's motion for authority to
7 continue customer programs, Mr. Delano will testify that he has
8 reviewed the motion, is familiar with its contents. He would
9 testify and describe the debtor's customer programs as follows.
10 Prior to the commencement date the debtors, in the ordinary
11 course of business, maintain a limited customer program which
12 in effect enabled customers to return parts which did not meet
13 customer specifications for replacement products. Under this
14 program the debtors would ship and customers would expect
15 replacement parts within approximately one week or less.

16 Frequently, the debtors would ship replacement parts
17 for the new invoice before return products are received. For
18 each returned part, the customer would receive a credit to be
19 applied to the amounts previously invoiced in the original
20 order. As of the commencement date only approximately
21 \$20,000.00 worth of returned goods were being processed.

22 Mr. Delano would testify that customers predicate
23 their expectations on timely and quality service, a hallmark of
24 Lexington's operations. Continuation of the debtor's customer
25 program is part and parcel of meeting those expectations.

1 As such, given the above, granting authority to
2 continue the debtor's return program is necessary and in the
3 best interest of the debtor's and all parties' interest.

4 In support of the debtor's motion for authority to
5 pay certain common carrier charges, processor fees and
6 warehouse fees owed to certain common carriers, third party
7 processors and warehouses, Mr. Delano will testify that he has
8 reviewed the motion and is familiar with the contents. As to
9 Lexington's common carriers, Mr. Delano will testify that to
10 expedite the shipment of raw materials and other goods from
11 vendors and the delivery of the debtor's products to their
12 customers and distributors the debtors employ various common
13 carriers usually through a third party shipping consultant,
14 commercial traffic.

15 In addition to commercial traffic the Rochester
16 facility does some direct shipping through Landstar and Harden
17 Transport, Inc., very de minimis amounts. As of the
18 commencement date the debtors owe Landstar and Harden \$575.00
19 and \$56.00 respectively.

20 Mr. Delano will testify that as of the commencement
21 date approximately \$350,000.00 worth of goods were in transit
22 and in the possession of common carriers and that the debtors
23 owe commercial traffic, Landstar, Harden, and other common
24 carriers approximately \$60,000.00.

25 Mr. Delano will testify that the raw materials and

1 supplies in transit are the means by which the debtors
2 manufacture products and without such goods the debtors could
3 not continue to operate and supply their customers.

4 As to third party processors, Mr. Delano would
5 testify that in the ordinary course of business the debtors
6 engage approximately 24 third party processors to perform
7 services with respect to their products before the products are
8 shipped to customers including plating, grinding, heat
9 treating, and other processing of metal and irons and
10 components of [inaudible] have been produced by the debtors for
11 use in producing components made by the rubber group.

12 The overall estimated book value of the components in
13 third party processors possession as of the commencement date
14 was approximately \$175,000.00 and as of the commencement date
15 the debtors estimate that they owe the third party processors
16 approximately \$97,000.00.

17 Mr. Delano would testify that if the processors
18 refused to return the debtors components which are required for
19 the debtors to produce their products, the debtors will suffer
20 significant harm and will be unable to meet their commitments
21 to customers.

22 Finally, with this motion, Your Honor, as to the
23 warehouses, Mr. Delano will testify that to store excess
24 inventory and the spare equipment the debtors employ five
25 warehouses in the ordinary course of business. The estimated

1 book value of the goods and equipment in the warehouses'
2 possession is approximately \$953,000.00. As of the
3 commencement date the debtors owed the warehouses approximately
4 \$37,000.00 in warehouse fees.

5 Mr. Delano would testify that he has been advised
6 that pursuant to applicable law the warehouses may have
7 possessory liens and that absent payment they may not turn over
8 the debtor's property in their possession. He would testify
9 that without access to the equipment and inventory, the debtors
10 would suffer significant harm and their operations may be
11 adversely affected.

12 In support of the debtor's motion for authority to
13 continue insurance and worker's compensation programs, Mr.
14 Delano would testify that he has reviewed the motion and is
15 generally familiar with the contents therein.

16 Mr. Delano would testify that the debtors maintain
17 various worker's compensation coverage in each of the states in
18 which they operate or used to operate through fully insured
19 third party insurance programs and various self-insured
20 programs. At this time there are no pre-petition obligations
21 owing; however, certain insurers may have claims for pre-
22 petition amounts that are processed in the ordinary course.

23 Mr. Delano would testify that in addition to the
24 worker's compensation program the debtors maintain and are
25 required to maintain various liability product, property-

1 related insurance programs which provide the debtors with
2 insurance coverage for liabilities relating to, among other
3 things, general commercial claims, property damage claims,
4 business interruption, general farm liability, directors and
5 officers liability, fiduciary liability, commercial prime
6 employment practices, umbrella, and various other product and
7 property related and general liabilities. Continuation of all
8 of these insurance programs is essential to the ongoing of the
9 debtor's businesses and indeed is required in many instances.

10 As of the commencement date the debtors are not aware
11 of any pre-petition claims for which a deductible under the
12 liability product and property insurance programs has not been
13 paid; however, at some time subsequent to the commencement date
14 deductibles for claims relating to the period prior to the
15 commencement date may arise.

16 Finally, Your Honor, in support of the debtor's
17 motion for authority to pay use taxes, Mr. Delano will testify
18 that he has reviewed the motion and is familiar with the
19 contents therein.

20 Mr. Delano would testify that in connection with the
21 normal operation of their business the debtors incur use tax
22 obligations to various state taxing authorities and that the
23 debtors are responsible for the payment of use taxes when the
24 debtors purchase certain tangible personal property for use in
25 a jurisdiction where the acquisition of the property is taxable

1 but the vendor, for whatever reason, did not charge a sales
2 tax.

3 Mr. Delano would testify that as of February 29, 2008
4 the debtors estimate that outstanding pre-petition liabilities
5 for use taxes are approximately \$5,000.00.

6 He would testify that he understands and has been
7 advised that many federal and state statutes hold officers and
8 directors of collecting entities personally liable or
9 criminally responsible for certain taxes owed by those entities
10 and to the extent that any of the use taxes remain unpaid by
11 the debtors, the debtors' officers and directors and perhaps
12 other employees may be subject to lawsuits or criminal
13 prosecution during the pendency of these Chapter 11 cases.

14 Mr. Delano would testify the threat of a lawsuit or
15 criminal prosecution and any ensuing liability would distract
16 the debtors and their personnel from important tasks to the
17 detriment of all parties and interest.

18 The dedicated and active participation of the
19 debtor's officers and directors and other employees is not only
20 integral to the debtor's continued uninterrupted operations but
21 also essential to the orderly administration of these Chapter
22 11 cases.

23 Accordingly, payment of the pre-petition use taxes is
24 necessary and appropriate and in the best interest of the
25 debtors and their estates and creditors.

1 Your Honor, that concludes the proffer of testimony--

2 THE COURT: Okay.

3 MR. MARCUS: -- for Mr. Delano.

4 THE COURT: Does anybody wish to cross examine Mr.
5 Delano? All right. Mr. Marcus, you can proceed.

6 MR. MARCUS: Your Honor, the first motion on the
7 agenda is the motion for approval of investment guidelines.

8 As I mentioned earlier, Your Honor, Judge Gonzalez
9 has now approved \$4 million in debtor in possession financing.
10 Prior to the commencement date the debtor's bank accounts were
11 swept daily by the pre-petition lenders so they did not have
12 any cash overnight. But now that they've commenced their
13 Chapter 11 cases and had a cash collateral usage order in
14 place, the bank account is not swept, so cash sits in the
15 operating account overnight. Cash also sits in the DIP account
16 which has been established at Northfolk Bank overnight as well.

17 The debtors are seeking the ability to invest the
18 money that is in these accounts overnight in high quality U.S.
19 dollar denominated money market obligations that receive the
20 highest short term rating from at least two nationally
21 recognized statistic rating organizations, a long term debt
22 rating of single A or better, are fully guaranteed by U.S.
23 insured securities.

24 Basically, Your Honor, rather than allowing the money
25 to sit there idle the debtors would like to safely invest for

1 at least some return the money again rather than just letting
2 it sit in the accounts overnight.

3 No objections were filed to this motion, Your Honor,
4 and I would ask Your Honor to enter the order to approve the
5 investment guidelines.

6 THE COURT: Let me just ask Mr. Silverstein.

7 MR. SILVERSTEIN: Yes, Your Honor. We did not file
8 an objection. I don't have an objection as such but I have
9 some heartburn I would like to talk to Your Honor about.

10 THE COURT: Okay.

11 MR. SILVERSTEIN: Heartburn is not the technical
12 term, but Your Honor, a year ago none of us would have had any
13 problem with the investment guidelines set forth in Exhibit A
14 to the motion.

15 In the current environment --

16 THE COURT: Well, I read carefully to see whether,
17 for example, what auction rate notes --

18 MR. SILVERSTEIN: Yeah, exactly. That's my point. I
19 have a situation --

20 THE COURT: -- an eligible investment and --

21 MR. SILVERSTEIN: As an example, I have a situation
22 where in order to get 30 or 40 more basis points on an
23 investment there had to be put, you know, \$50 million in and
24 back rated the auction notes that seemed pretty good to us way
25 back when.

1 My preference, if possible, and I don't think there's
2 a huge amount of money at stake, my preference would be that
3 [inaudible] of the United States can be behind any investments
4 that the debtors make consistent with 345. I don't think this
5 is a major issue because I don't think there is a huge amount
6 of money. I prefer that we be a little more conservative on
7 this.

8 I apologize for not filing an objection but when you
9 think about it given this environment, I think we ought to be
10 as conservative as possible. Again, this is not a dry run of
11 this case but I think it gives everyone a bit more comfort if
12 we comply a little more tightly with 345 if possible. If the
13 debtors are telling me it's impossible, I'd like to hear that.
14 That's my only comment as to the quote/unquote heartburn.

15 THE COURT: Mr. Marcus, I guess my first -- I was
16 intending to ask the question about whether, for example,
17 auction rate notes are an eligible investment under the
18 investment guidelines that the debtor has proposed.

19 MR. MARCUS: I sort of have to defer to Mr. Delano on
20 this. I think the answer to that is no. I think the expected
21 investment, overnight investment would be in the bank money
22 market funds. But you know, I think that to alleviate this,
23 you know, the debtors are happy to discuss with the committee
24 before the investments are made and get the committee's
25 approval before any money is invested. So if that's helpful

1 here, I assume it would be --

2 THE COURT: Well, you're not going to do that --
3 you're not going to have to do that on a regular basis. I mean
4 I would suggest that you -- let me ask the U.S. Trustee's
5 Office first what their view is. Ms. Martin?

6 MS. MARTIN: Marylou Martin, The Office of the U.S.
7 Trustee. Your Honor --

8 THE COURT: Just speak up a little bit.

9 MS. MARTIN: I'm sorry. We have no objection to the
10 motion. We're seeking a statement from the committee to
11 indicate that they really had no objection since we believe
12 it's really their issue.

13 THE COURT: Okay.

14 MR. SILVERSTEIN: Well, which, Your Honor, is what I
15 mean by heartburn. It seems to me that the normal -- normally
16 Exhibit A wouldn't have been what was done in this district
17 because I know that debtor's counsel did not make up this list
18 anew. This has been used many times before.

19 THE COURT: Sure.

20 MR. SILVERSTEIN: There's just more sensitivity these
21 days to where the money is put and frankly, 345 is a section
22 that none of us really spent a lot of time [inaudible] but I
23 think there's a reason why the statute was written the way it
24 was written which is that investments [inaudible] credit of the
25 U.S. behind it.

1 So I appreciate Mr. Marcus' comments as far as
2 consulting but I don't know that that's necessarily necessary.
3 It seems to me they can pick something that has no risk. If
4 it's, you know, five basis points lower in terms of return, we
5 will not be troubled by [inaudible].

6 THE COURT: Let me just look at the guidelines again.

7 [Pause in proceedings.]

8 THE COURT: How do you want to proceed on this, Mr.
9 Marcus? You know, I'm sensitive to Mr. Silverstein's issue but
10 he didn't file an objection, so --

11 MR. MARCUS: Right. [Inaudible].

12 THE COURT: Yes, go ahead. Go ahead.

13 Here's what I'd like to do with respect to this
14 motion. Mr. Marcus?

15 MR. MARCUS: I'm sorry.

16 THE COURT: Are you going to try and modify the
17 [inaudible]?

18 MR. MARCUS: I was going to see if we could agree on
19 which of the romanettes on Exhibit A we might be able to agree
20 are acceptable investments. I think we're probably one apart
21 right now. So maybe if we just have two minutes.

22 THE COURT: Go ahead, go ahead.

23 MR. SILVERSTEIN: I apologize, Your Honor.

24 THE COURT: That's okay. I intended to ask about
25 this issue.

1 [Pause in proceedings.]

2 MR. MARCUS: Thank you very much, Your Honor. I
3 appreciate that brief moment. What we'd like to do, and I
4 think this will satisfy the committee's concerns is to change
5 Exhibit A to permit the investments in Categories 1, 2, and 3
6 and eliminate 4 through 8 if that is acceptable.

7 THE COURT: If that's acceptable to the debtor and
8 the committee, the motion will be granted on that basis. Why
9 don't you just submit a revised formal order?

10 MR. MARCUS: Thank you.

11 MR. SILVERSTEIN: Thank you, Your Honor.

12 MR. MARCUS: Your Honor, the next motion is the wage
13 and benefits motion. Your Honor granted this motion on an
14 interim basis on the very first day. There was an agreement
15 between the debtors and the U.S. Trustee, I don't recall --

16 THE COURT: I guess it was just some expense
17 reimbursement that --

18 MR. MARCUS: That's correct, just on Mr. Lubin's for
19 a total of about \$5,000.00.

20 THE COURT: Right. No objection having been filed,
21 the motion is approved on a final basis.

22 MR. MARCUS: Thank you, Your Honor.

23 Your Honor, customer programs, this was one where
24 Your Honor had suggested that we continue to ship the goods
25 back and we would come back and determine which way the credits

1 are allocated.

2 THE COURT: Right.

3 MR. MARCUS: What we'd like to do is allocate those
4 credits to the pre-petition invoices in accordance with the
5 program itself to satisfy, you know, our obligations to our
6 customers. Again, it's a de minimis amount, \$20,000.00.

7 THE COURT: Again, no objection has been filed. The
8 motion is granted.

9 MR. MARCUS: Thank you, Your Honor.

10 Your Honor, the next motion is the motion to pay
11 common carriers, third party processors and warehouses. On the
12 first day, Your Honor, you had granted us authority to pay the
13 common carrier. We're back here to ask for the processors who
14 hold almost twice the amount of goods than they are owed and
15 warehouses who again are holding approximately \$975,000.00
16 worth of goods and are only owed about \$37,000.00.

17 THE COURT: Yes. Anyone want to be heard? All
18 right. The motion is granted.

19 MR. MARCUS: Your Honor, the next motion is the
20 debtor's insurance motion. As Mr. Delano noted in his proffer,
21 there is very little that remains outstanding pre-petition as
22 of right now. The importance of this motion is really for
23 claims that may arise in the future that might be related to
24 the pre-petition period and we want to be able to maintain all
25 of our liability programs, especially worker's comp which the

1 company believes is very important really to all companies but
2 especially one in the manufacturing industry.

3 THE COURT: Do you know how -- is there any amount
4 due, any pre-petition amounts due on worker's compensation
5 programs?

6 MR. MARCUS: I'm not aware of any. I don't think
7 that there are any amounts due. However, we do have policies
8 that --

9 THE COURT: Look back.

10 MR. MARCUS: -- go back for quite some time and
11 claims might still be asserted. So it is possible that
12 something would arise, but as of now there shouldn't be any
13 pre-petition amounts outstanding.

14 There is, Your Honor, I believe one worker's
15 compensation program where there are premiums paid in seven or
16 ten installments if I'm remembering correctly. I can get the
17 motion. Certainly that's more accurate than my memory.

18 THE COURT: Mr. Marcus, I don't have a problem with
19 this. I have a question for you. What happens if you don't
20 pay the pre-petition amounts?

21 MR. MARCUS: For insurance policies?

22 THE COURT: Worker's comp policies. Look, I don't
23 want [inaudible]. I mean there are no objections that have
24 been filed to this. It's the Howard Delivery case that raises
25 questions about it, what the analytical basis for approving

1 payment of pre-petition worker's comp premiums.

2 MR. MARCUS: Well, I guess theoretically there are I
3 think two possible consequences. One is a motion to terminate
4 the contract or to just terminate the contract if it is no
5 longer executory.

6 THE COURT: You have policies in lots of different
7 states as well.

8 MR. MARCUS: Yes.

9 THE COURT: The motion is granted. There's no
10 objections. But this is an issue -- it's an interesting issue
11 in light of the Supreme Court's Howard Delivery decision, but
12 the motion is granted.

13 MR. MARCUS: Thank you, Your Honor.

14 Your Honor, the next motion is the motion to pay use
15 taxes. Again, this is a relatively de minimis amount and based
16 upon the potential for some personal liability.

17 THE COURT: All right. The motion is granted. No
18 objection having been filed, the motion is granted.

19 MR. MARCUS: Thank you, Your Honor.

20 Your Honor, the next motion is our utility motion.
21 We had offered utilities a two week deposit as adequate
22 assurance of payment. We've received three responses to this.
23 Rochester Gas and Electric, who all they wanted was a two week
24 deposit and we agreed to that and gave it to them. Georgia
25 Power, who you might have seen filed an objection --

1 THE COURT: I did.

2 MR. MARCUS: -- we worked out a resolution with them
3 for a one month deposit and they withdrew their objection. We
4 had some informal communications with Ohio Edison who was
5 represented by counsel and we worked out a similar arrangement
6 with them eliminating the need to file an objection. So just
7 those three responses, no other objections.

8 THE COURT: All right. The utility motion is
9 granted.

10 MR. MARCUS: Thank you.

11 Your Honor, the next motion is the motion to employ
12 ordinary course professionals. On this one we did receive some
13 comments from the U.S. Trustee's Office. The comment was that
14 the proposed order should be revised so that there's an
15 aggregate cap of \$500,000.00 for all professionals, for all
16 ordinary course professionals, for the entire case. The
17 debtors agreed to that concept and you'll find that in the
18 revised order now. So I think we have no other comments about
19 this order or certainly no objections to it.

20 THE COURT: All right. That motion is granted as
21 well.

22 MR. MARCUS: Thank you.

23 Your Honor, the interim compensation procedures
24 motion, again, an informal discussion with the United States
25 Trustee where the trustee proposed that they should be -- that

1 parties in interest should be permitted to object to the
2 payment of fees to the extent that the debtors were not filing
3 the operating reports I believe was the substance of the
4 paragraph that they wanted insertion. An objection and a
5 request to hold back fees for professionals that were not
6 timely filing monthly fee statements and we agreed to both of
7 those changes and Your Honor will find those in the order as
8 well.

9 THE COURT: Okay. Then the motion is approved on
10 that basis.

11 MR. MARCUS: Thank you, Your Honor.

12 The last motion on for today is the debtor's
13 application to employ Weil, Gotshal and Manges. We filed
14 obviously in connection with the application the affidavit of
15 Richard Krasnow which discloses the disinterestedness and the
16 potential connections. There were no objections to this.

17 I would note for the record, Your Honor, we will file
18 a supplemental affidavit, but Mr. Krasnow wanted me to note for
19 the record in his affidavit we had estimated there was a
20 remaining balance, a retainer balance of approximately I
21 believe \$65,000.00. It turns out that after calculation and
22 true-up it's about \$97,000.00.

23 THE COURT: Okay.

24 MR. MARCUS: We'll figure those numbers out and file
25 supplemental disclosure to the extent necessary. We've already

1 disclosed that to the creditors committee. But there were no
2 objections to this, Your Honor. I would ask that this one be
3 approved as well.

4 THE COURT: No objections having been filed, the
5 motion is granted.

6 MR. MARCUS: Thank you very much, Your Honor. That's
7 all you have unless Your Honor has questions.

8 THE COURT: No. Just I guess I think in part with my
9 initial uncertainty as to whether I would keep the case or not,
10 we did not set dates for omnibus motions. I don't know what
11 motion practice, if any, you expect over the next few months,
12 either the rejection of contracts -- what do you anticipate
13 coming up, Mr. Marcus?

14 MR. MARCUS: We don't anticipate actually rejecting
15 any contracts or leases now. I don't want to preclude the
16 debtors from doing that. They only have a few leases of non-
17 residential real property. I assume there's equipment leases
18 as well. But for the most part I believe the business will
19 remain untouched and will just continue to operate. Again, I
20 don't want to eliminate our ability to come to the Court and
21 ask for rejection to the extent that would be helpful, but I
22 don't anticipate that right now. I think that what I see on
23 the horizon is probably kick starting the plan process, getting
24 a planning disclosure statement, getting the process up and
25 running very quickly. Motions that -- the only motion that I

1 could see upcoming in addition to disclosure statement and
2 confirmation would be a motion to establish [inaudible], a
3 motion to deal with our leases on probably the 120th day of the
4 case. As of right now, Your Honor, you know, we've been in
5 numerous discussions with the debtors and we don't anticipate,
6 you know, filing any other motion practice. No contemplated
7 asset sales at this time, no contemplated assumptions or
8 rejections at this time.

9 THE COURT: All right. Mr. Silverstein?

10 MR. SILVERSTEIN: Yes, Your Honor.

11 THE COURT: Your retention motion is going to be
12 coming up?

13 MR. SILVERSTEIN: Yeah, that obviously will come
14 but -- and again, the committee was just formed and we've
15 really not deliberated about the substantive matters other than
16 retention of various professionals and the like.

17 Mr. Marcus gave a summary as to what the case was
18 about. I think he described it as a very simple balance sheet
19 restructuring.

20 One of the things that the committee is going to have
21 to consider, and I'm not looking for a date now so don't
22 misunderstand, but one of the things that the committee will
23 have to deliberate on and consider is whether it's appropriate
24 and warranted to move for a Chapter 11 trustee under Section
25 1104 because the position here from the debtor at least pre-

1 petition and I believe post petition is that they are not
2 fiduciaries to creditors. That's something that I just need
3 Your Honor to be aware of because this is not just as vanilla
4 as Mr. Marcus described.

5 So again, I'm not here to just spout about something
6 that hasn't been filed yet but that should be on your radar as
7 something that is a possibility. The committee has not made
8 any determination as to whether it wants to proceed on that,
9 but frankly they have to consider it given the fact that the
10 debtor is taking the position that they're not fiduciaries. I
11 think the fact that the debtor is taking that position skews
12 the conduct in this case of how the debtor will proceed. You
13 know, substantively I think it's premature. I think it was
14 worth noting, however, Your Honor.

15 THE COURT: The only thing I would say in that
16 regard, Mr. Silverstein, is that if the committee -- Mr. Marcus
17 has indicated an intention to move forward with the disclosure
18 statement and plan process. If the committee intends to move
19 for the appointment of a trustee, it better do it sooner than
20 later. It's not going to come in the middle of -- after I've
21 got a disclosure statement in front of me.

22 MR. SILVERSTEIN: That's why I raised it. That's why
23 I raised it now to give a heads up as a possibility. Again,
24 the committee was just formed and we've not had substantive
25 deliberations on that issue.

1 THE COURT: Mr. Marcus, do you want a date for a
2 hearing date, as a holding date or you don't anticipate the
3 need for that now?

4 MR. MARCUS: I think, Your Honor, I actually
5 neglected to mention one other motion that I am aware of and
6 that's the debtor's application to retain W.Y. Campbell as
7 financial advisor. I think that that should be filed in
8 relatively short order and perhaps the next hearing date would
9 be one that can accommodate that. Without speaking to the U.S.
10 Trustee, I think the U.S. Trustee probably has a position on
11 how long the financial advisory application needs to be out on
12 notice. I think that's the case, probably 20 or 25 days or 25
13 days or so is --

14 THE COURT: Isn't it 20? Is it 20 days, Ms. Martin?

15 MS. MARTIN: I believe it's 20 days.

16 THE COURT: I think it's 20 days particularly where
17 there's a committee in place. It's an issue if there's no
18 committee, but you've got a committee.

19 Why don't we set a hearing date, next hearing date as
20 Tuesday, May 27th? It is the day after Memorial Day. I don't
21 know whether that presents a problem for anybody.

22 MR. MARCUS: That does not present a problem for me,
23 Your Honor.

24 THE COURT: All right. You're getting your weekend
25 unless you wind up with briefing. All right.

1 MR. SILVERSTEIN: Is there a time of day, Your Honor,
2 that --

3 THE COURT: Yes, 10 a.m.

4 MR. MARCUS: 10 a.m.

5 THE COURT: It'll be in courtroom 501. Anything
6 else, anybody?

7 MR. MARCUS: Yeah. I guess, Your Honor, when I --
8 just one clarification. I mentioned we were going to sort of
9 start down the road to disclosure statement and confirmation
10 and that wasn't, you know, without the participation of the
11 creditors committee, so I don't mean to insinuate we're just
12 going to file a motion to approve a disclosure statement in the
13 next week or so. That's not the timing that I had in mind. I
14 just though, you know, a general sort of case status as well.

15 THE COURT: Okay.

16 MR. MARCUS: If there's a motion for a trustee, we'll
17 deal with it when it comes.

18 THE COURT: Do you have an estimate of when you think
19 you can be in a position to move forward with the disclosure
20 statement?

21 MR. MARCUS: I think probably best guess right now
22 would be near the end of May.

23 THE COURT: Okay.

24 MR. MARCUS: But don't hold me to that.

25 MR. SILVERSTEIN: To file it or to proceed?

1 MR. MARCUS: Probably to file, yeah.

2 THE COURT: All right. If issues come up and you
3 need a hearing date in advance of Tuesday, May 27th, let my
4 chambers know and we'll schedule a date earlier than that. It
5 doesn't sound like you need a series of omnibus motion days
6 scheduled in this case so we'll just go forward with that May
7 27th date. If because of discussions between the committee and
8 the debtor you need to reschedule the date for some reason,
9 just let me know sufficiently in advance and we'll give you a
10 new date. Okay?

11 MR. MARCUS: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. MARCUS: I have all of the orders other than the
14 interim --

15 THE COURT: Investment guidelines?

16 MR. MARCUS: Investment guidelines rather, order.

17 THE COURT: You want to just please hand them up to
18 my law clerk?

19 MR. MARCUS: Would it be acceptable to e-mail the
20 revised exhibit to chambers?

21 THE COURT: Yes, it would. Yes. You'll get an e-
22 mail address from one of my law clerks --

23 MR. MARCUS: Thank you.

24 THE COURT: -- and you can e-mail that.

25 Okay. We're adjourned. Thank you very much.

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MR. SILVERSTEIN: Thank you.

MR. MARCUS: Thank you, Your Honor.

* * * * *

1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

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Mary Greco

7 Dated: July 25, 2008

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